

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 04-CR-248

-vs-

**JEFFERSON N. CALIMLIM,
ELNORA M. CALIMLIM, and,
JEFFERSON M. CALIMLIM,**

Defendants.

DECISION AND ORDER

By order dated November 4, 2005, Magistrate Judge William E. Callahan, Jr. recommended to the Court the following.

That the motion to suppress evidence and statements brought by the defendants, Jefferson N. Calimlim, Elnora M. Calimlim and Jefferson M. Calimlim, individually, be denied.

Further, Magistrate Judge Callahan recommended that Jefferson N. Calimlim's and Elnora Calimlim's motion to dismiss, or in the alternative its motion to require the government to elect which count it will proceed on, be denied in part and granted in part. Specifically, Magistrate Judge Callahan recommended that the government be required prior to trial to elect to prosecute Jefferson N. Calimlim and Elnora M. Calimlim under either Count Two or Count Three of the Second Superseding Indictment, deeming the indictment to be multiplicitous.

Lastly, Magistrate Judge Callahan ordered that the Calimlim's motion to strike surplusage be denied.

Prior to the recommendation, Magistrate Judge Callahan, in an order dated March 24, 2005, recommended to this Court that Calimlims' motion to dismiss the superseding indictment be denied and that a request for the production of certain grand jury materials also be denied.

The Court has read the briefs submitted by the parties objecting to Magistrate Judge Callahan's recommendations, the evidentiary hearings conducted in this case, grand jury materials and other filings, and rules as follows.

The Magistrate Judge's recommendations are adopted *in toto* except for the following. Magistrate Judge Callahan's recommendation that the government elect whether to proceed under either Count Two or Three is modified as follows. The Court does not view the charges as multiplicitous. Rather, it views the allegations charged outlined in Count Three as a lesser included charge of Count Two. Both charges in the indictment will be submitted to the jury with an appropriate lesser included jury instruction.

Dated at Milwaukee, Wisconsin, this 27th day of January, 2006.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge